

Amendment No. 1 to SB2895

Johnson
Signature of Sponsor

AMEND Senate Bill No. 2895*

House Bill No. 3246

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 62-9-106(d)(1), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(1)

(A) Any person selling or attempting to sell metal to a scrap metal dealer in violation of this section shall be guilty of a Class A misdemeanor unless the value of the metal, in its original and undamaged condition, in addition to any costs which are, or would be, incurred in repairing or in the attempt to recover any property damaged in the theft or removal of such metal, is in an aggregate amount which exceeds five hundred dollars (\$500), in which case such person shall be guilty of a Class E felony and, upon conviction, shall be punished only by a fine of not more than five thousand dollars (\$5,000).

(B) Any scrap metal dealer purchasing or attempting to purchase scrap metal in violation of this section shall be guilty of a Class A misdemeanor.

SECTION 2. Tennessee Code Annotated, Title 62, Chapter 9, Part 1, is amended by adding the following language as a new, appropriately designated section:

62-9-114.

(a) The commissioner is authorized to investigate, and shall investigate upon the verified complaint in writing of any person, a scrap metal dealer for an alleged violation of an unregistered activity pursuant to § 62-9-102, purchase restrictions pursuant to §§ 62-9-106 and 62-9-107 or payment restrictions pursuant to §§ 62-9-104(c) and 62-9-107(d); provided, that a written complaint shall require evidence, documentary or otherwise, presented in connection with the written complaint, that makes out a prima

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facie case of a violation of unregistered activity, or purchase restrictions, or payment restrictions as determined by the commissioner.

(b) If, after investigation, the commissioner finds a scrap metal dealer to be in violation of any of the statutes enumerated in subsection (a), then the commissioner shall notify the dealer in writing of the dealer's right to a hearing prior to imposing any sanction permitted under this chapter. If the dealer fails to notify the commissioner in writing within ten (10) days from the date of the commissioner's notice that the dealer seeks a hearing, then such hearing shall be waived and the commissioner may impose upon the dealer any sanction or discipline permitted by this chapter. All hearings conducted pursuant to this subsection (b) shall be in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) In the event the matter contained in the complaint has been filed or made a part of a case pending in any court in this state, the commissioner may withhold its investigation or decision until the court action has been concluded.

SECTION 3. Tennessee Code Annotated, Section 62-9-101, is amended by adding the following language as a new, appropriately designated subdivision:

() "Commissioner" means the commissioner of commerce and insurance or the commissioner's designee or, in the event of the commissioner's or designee's absence or vacancy in the office of the commissioner, the deputy commissioner;

SECTION 4. Tennessee Code Annotated, Section 62-9-105(c)(1), is amended by deleting the language "a law enforcement officer shall have the right to inspect" and by substituting instead the language "a law enforcement officer or the commissioner shall have the right to inspect".

SECTION 5. Tennessee Code Annotated, Section 62-9-102(a), is amended by deleting the existing language of the subsection and by substituting instead the following:

(a) No scrap metal dealer shall purchase, deal, or otherwise engage in the scrap metal business unless the dealer and any location used by the dealer to purchase, deal or otherwise engage in the scrap metal business is registered with the department. All registrations under this chapter shall expire two (2) years from the date of the registration or the renewal of the registration. The commissioner may promulgate and adopt rules and regulations that are reasonably necessary to carry out this chapter. The commissioner shall establish registration and renewal fees that are adequate to cover the administrative costs associated with the registration program.

SECTION 6. Tennessee Code Annotated, Section 62-9-109, is amended by deleting the section in its entirety and by substituting instead the following:

(a) It is an offense for a person to engage in the business of buying scrap metal without registering as a scrap metal dealer with the department or falsely registering with the department as a dealer.

(b) A person engaged in the business of buying scrap metal, as a registered scrap metal dealer or otherwise, commits an offense who knowingly:

(1) Purchases scrap metal:

(A) That was not property of the seller and the seller did not have the authorization to sell the metal; or

(B) That was unlawfully obtained by the seller; or

(2) Commits any other act in violation of this chapter.

(c) A violation of subsection (a) or (b) is a Class A misdemeanor, punishable only by fine, unless the value of the metal, in its original and undamaged condition, in addition to any costs which are, or would be, incurred in repairing or in the attempt to recover any property damaged in the theft or removal of such metal, is in an aggregate amount which exceeds five hundred dollars (\$500). In such instance, such scrap metal

dealer shall be guilty of a Class E felony and, upon conviction, shall be punished only by a fine of not more than five thousand dollars (\$5,000).

(d)

(1) It is an offense for a person to sell or attempt to sell scrap metal knowing that the metal is stolen, whether by the person selling or by some other person.

(2) A violation of subdivision (d)(1) shall be punished as theft and graded according to the value of the metal sold or attempted to be sold as provided in § 39-14-105.

(3) In determining the value of the metal sold or attempted to be sold for purposes of grading in subdivision (d)(2), the metal shall be valued in its original and undamaged condition, in addition to any costs which are, or would be, incurred in repairing or in the attempt to recover any property damaged in the theft or removal of such metal and not the amount by which the defendant sold or attempted to sell the metal.

SECTION 7. Tennessee Code Annotated, Section 62-9-110, is amended by designating the existing language as subsection (a) and by adding the following as a subsection (b):

The commissioner may deny an application for registration or may suspend, revoke or refuse to issue or renew any registration issued under this chapter upon finding that the holder or applicant is guilty of any violation enumerated in § 62-9-114(a) or any rule properly promulgated by the commissioner. In addition to or in lieu of any other lawful disciplinary action under this section, the commissioner may assess a civil penalty of up to one thousand dollars (\$1,000) for each violation. Each day of continued violation constitutes a separate violation.

SECTION 8. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 9. For purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on July 1, 2012.